

REMARKS

Claims 1-16 are pending, with claims 1, 4, 6, and 9 being independent. No changes have been made to the application in this paper.

Claim Rejections Under 35 USC 112

Claims 7 and 8 have been rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that the applicant regards as the invention. This rejection is respectfully traversed.

The Examiner states as follows:

Specifically, claim 7 recites in lines 3-4, "...controller calculates a target track to be jumped to". It is unclear to the Examiner how or why the controller calculates a "target track", considering that the target track is specified by an input to the disk drive apparatus, e.g. a user command to move to a new specified target track. The Applicant's response in papers filed 12/15/2008 are [*sic*] acknowledged. However, merely citing locations in the specification which includes similar limitations is not sufficient to clarify the issue of record.

Claim 8 is rejected due to it's [*sic*] dependency upon rejected base claim 7.

By "[t]he Applicant's response in papers filed 12/15/2008, the Examiner is referring to the arguments on pages 6-8 of the Amendment of December 15, 2008, in which the applicant pointed out that claim 7 is consistent with paragraphs [0031] and [0040] of the specification and FIG. 3 of the drawings.

Claim 7 recites that "after the controller has output the track jump start signal to the driver, the controller calculates the target track and sets an output time of a track jump end signal." It is submitted that the fact that it is unclear to the Examiner how or why the controller calculates a target track is not a proper basis for a rejection under 35 USC 112, second paragraph, and it is respectfully requested that the Examiner review MPEP 2171-2173.05(v) on MPEP pages 2100-216 to 2100-232 to confirm this for herself. In particular, MPEP 2172 states as follows on MPEP page 2100-216:

The second paragraph of 35 U.S.C. 112 is directed to requirements for the claims:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

There are two separate requirements set forth in this paragraph:

(A) the claims must set forth the subject matter that applicants regard as their invention; and

(B) the claims must particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant.

The first requirement is a subjective one because it is dependent on what the applicants for a patent regard as their invention. The second requirement is an objective one because it is not dependent on the views of applicant or any particular individual, but is evaluated in the context of whether the claim is definite — i.e., whether the scope of the claim is clear to a hypothetical person possessing the ordinary level of skill in the pertinent art.

It is submitted that claim 7 meets both requirements discussed above—i.e., it sets forth the subject matter that the applicant regards as his invention, i.e., "after the controller has output the track jump start signal to the driver, the controller calculates the target track and sets an output time of a track jump end signal," and the scope of claim 7 is clear to a hypothetical person possessing the ordinary level skill in the pertinent art.

Furthermore, the rejection appears to be based on a misunderstanding by the Examiner. The basis for the rejection is that "[i]t is unclear to the Examiner how or why the controller calculates a 'target track', considering that the target track is specified by an input to the disk drive apparatus, e.g. a user command to move to a new specified target track." However, it is submitted that one of ordinary skill in the art at the time of the invention would have understood that a user does not input a command to move to a target track as alleged by the Examiner, but that the user submits a request to read or write a file to the disk drive apparatus via user software, and the controller of the disk drive calculates a target track required to read or write the file, which is consistent with what is recited in claim 7.

For at least the foregoing reasons, it is respectfully requested that the rejection of claims 7 and 8 (i.e., claim 7 discussed above and claim 8 depending therefrom) under 35 USC 112, second paragraph, be withdrawn.

Claim Rejections Under 35 USC 103

Rejection 1

Claims 1-6, 9, 13, and 15 have been rejected under 35 USC 103(a) as being unpatentable over Nakatsu et al. (Nakatsu) (U.S. Patent No. 4,955,009) in view of Akiyama (U.S. Patent No. 5,712,835). This rejection is respectfully traversed.

Claim 1

Feature 1

It is submitted that Nakatsu and Akiyama do not disclose or suggest the following feature of independent claim 1:

a servo to judge a position of the pickup based on the error signal, generate a track jump start control signal based on the judged position of the pickup, and generate a track jump end control signal.

The Examiner considers FIG. 2 Nakatsu to disclose a "servo" 60 that judges a position of the pickup based on an "error signal" output from the velocity detection circuit 15 and generates a track jump start control signal, and a "driver" 5 to move a pickup directly to a target track of an optical disk 1 in response to the track jump start control signal. However, the alleged "error signal" output from the velocity detection circuit 15 is not actually an "error signal" as alleged by the Examiner, but is a current spot velocity signal indicating a current spot velocity of a light spot on the optical disk 1. Furthermore, the alleged "servo" 60 in FIG. 2 of Nakatsu is actually a velocity control section 60 that judges a velocity error between the current spot velocity and a reference spot velocity, and generates a drive signal for the "driver" 5 to reduce the velocity error to zero. Accordingly, it is submitted that FIG. 2 of Nakatsu does not disclose or suggest "a servo to judge a position of the pickup based on the error signal, [and] generate a track jump

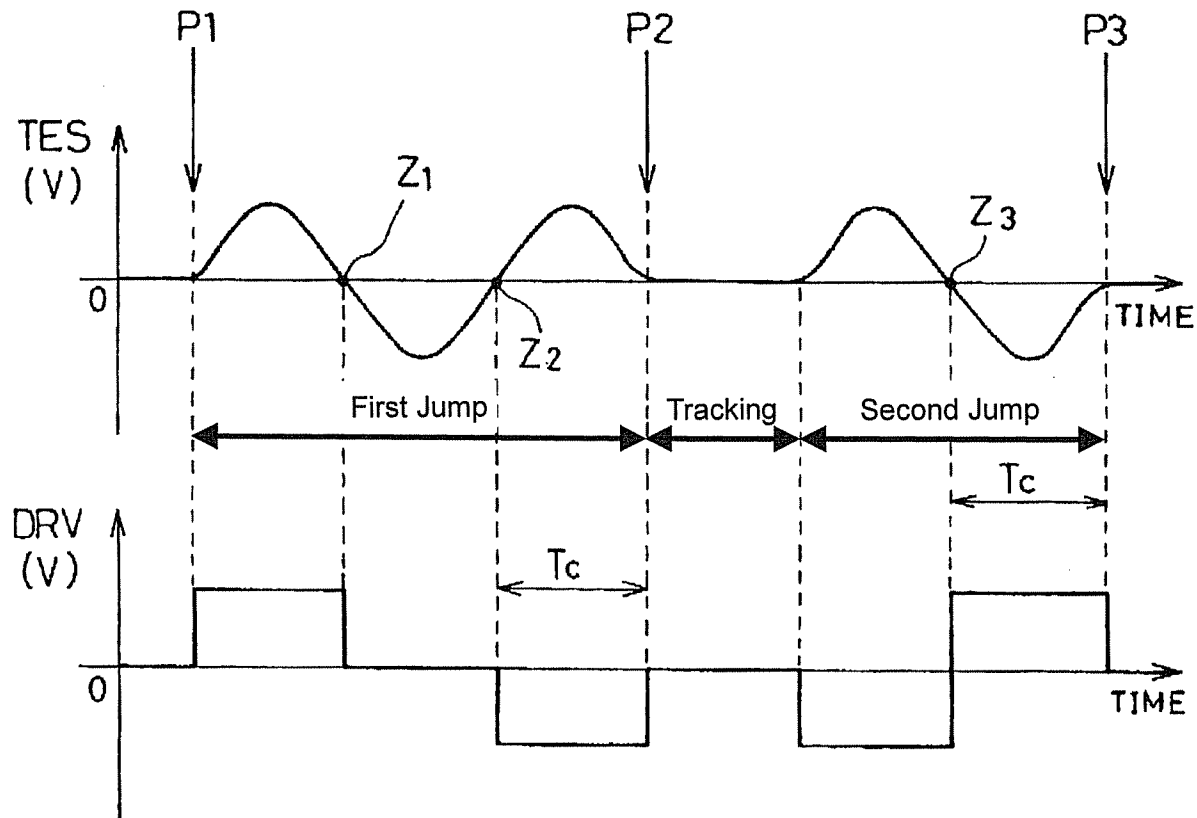
start control signal" as recited in claim 1 as alleged by the Examiner based on the Examiner's interpretation of Nakatsu set forth in the Final Office Action of March 17, 2009.

Furthermore, should the Examiner change her position in response to the above arguments and allege that Nakatsu discloses or suggests the above feature of claim 1 based on some new interpretation of Nakatsu, it is submitted that the Examiner will be required to reopen prosecution and issue a non-final Office Action to set forth a new ground of rejection based on the new interpretation because claim 1 has not been amended in this paper.

Furthermore, as recognized by the Examiner, Nakatsu does not disclose or suggest "generat[ing] a track jump start control signal based on the judged position of the pickup" as recited in claim 1. The Examiner considers this feature to be taught by column 8, lines 62-65, and column 9, lines 6-11 of Akiyama, and is of the opinion that it would have been obvious to alter the invention of Nakatsu per the teachings of Akiyama for the purpose of improving the accuracy of the access operation.

Column 9, lines 6-11, of Akiyama relied on by the Examiner is part of the detailed description of the feature shown in FIG. 3 of Akiyama in which a tracking operation is performed by the tracking control unit 6 shown in FIG. 2 of Akiyama between the first track jump from an initial track at position P1 to an intermediate track at position P2 shown in FIG. 1 of Akiyama that is performed by the track jump control unit 8 in FIG. 2 of Akiyama, and the second track jump from the intermediate track at position P2 to a target track at position P3 shown in FIG. 1 of Akiyama that is performed by the track jump control unit 8 in FIG. 2 of Akiyama. The tracking operation inserted between the first jump and the second jump is shown in the following marked-up copy of FIG. 3 of Akiyama:

FIG. 3



The Examiner is of the opinion that Akiyama discloses the feature "generat[ing] a track jump start control signal based on the judged position of the pickup" recited in claim 1 because Akiyama does not generate the track jump start control signal for the second jump shown in FIG. 3 until after the light spot has been centered on the intermediate track at position P₂ as shown in FIG. 1 by the tracking operation between the first jump and the second jump shown in FIG. 3.

However, the only element in FIG. 2 of Akiyama that judges the position of the light spot between the first jump and the second jump is the tracking control unit 6. However, the tracking control unit 6 does not output a signal to the track jump control unit 8 to tell the track jump control unit 8 that the light spot is centered on the intermediate track at position P₂ so that the track jump control unit 8 can generate the track jump start control signal for the second jump.

Rather, the track jump control unit 8 generates the track jump start control signal for the second jump as soon as the track jump control unit 8 controls the switch 9 in FIG. 2 to switch from position a to position b as described in the following passage in column 7, lines 38-48, of Akiyama:

The first track jump from the position P1 to the position P2 is carried out in accordance with the above control procedure. Consecutively conducted is the second track jump from the position P2 to the position P3, in the direction opposite to that of the first track jump. The second track jump is a 2-track jump, which is executed under the control in the following procedure.

First of all, as soon as the switch 9 is controlled so that the driving unit 7 is connected with the track jump control unit 8 through the position b, the track jump control unit 8 outputs DRV for accelerating the objective lens 3.

Thus, it appears that there is no way for the track jump control unit 8 to know whether the light spot is actually centered on the intermediate track at position P2 before it generates the track jump start control signal for the second jump. Furthermore, it is submitted that nothing whatsoever in Akiyama discloses or suggests that the track jump control unit 8 controls the switch 9 in FIG. 2 to switch from position a to position b based on an actual judgment that the light spot is centered on the intermediate track at position P2. Accordingly, it is submitted that the track jump control unit 8 does not generate the track jump start control signal for the second jump based on a judged position of the light spot, such that Akiyama does not disclose or suggest the feature "generat[ing] a track jump start control signal based on the judged position of the pickup" recited in claim 1 as alleged by the Examiner.

For at least the foregoing reasons, it is submitted that Nakatsu and Akiyama do not disclose or suggest "a servo to judge a position of the pickup based on the error signal, generate a track jump start control signal based on the judged position of the pickup, and generate a track jump end control signal" as recited in claim 1.

Feature 2

It is submitted that Nakatsu and Akiyama do not disclose or suggest the following feature of claim 1:

a driver to move the pickup directly to a target track of the optical disc in response to the track jump start control signal, and stop moving the pickup in response to the track jump end control signal.

The Examiner considers FIG. 2 of Nakatsu to disclose a "driver" 5 to move a pickup directly to a target track of an optical disk 1 in response to the track jump start control signal generated by a "servo" 60. However, the Examiner has proposed altering the "servo" 60 to generate the track jump start control signal based on a judged position of a "pickup" 3 in FIG. 2 of Nakatsu based on FIG. 3 of Akiyama, which shows indirectly moving a pickup from an initial track at position P1 to a target track at position P3 in two jumps via an intermediate track at position P2 and performing a tracking operation between a first jump from the initial track at position P1 to the intermediate track at position P2, and a second jump between the intermediate track at position P2 and the target track at position P3 as shown in the marked-up copy of FIG. 3 of Akiyama above. The Examiner is apparently of the opinion that it would have been obvious to modify the "servo" 60 in FIG. 2 of Nakatsu to generate the track jump start control signal to jump directly from an initial track to a target track based on the results of a tracking operation performed before the track jump start control signal is generated, like the tracking operation that is performed between the first and second jumps in FIG. 3 of Akiyama, because "Akiyama has clearly recognizes [*sic*] a need in the art for increasing accuracy of a track jump by employing the very feature recited in Applicant's claim."

However, assuming *arguendo* that Akiyama discloses that the track jump start control signal for the second jump is generated based on the results of the tracking operation performed between the first and second jumps (which it is not for at least the reasons discussed above in connection with Feature 1), it is submitted Akiyama does not generate the track jump start control signal for the first jump based on the results of a tracking operation performed before the first jump, despite the Examiner's allegation that "Akiyama has clearly recognizes [*sic*] a need in the art for increasing accuracy of a track jump by employing the very feature recited in Applicant's claim." Accordingly, it is submitted that nothing whatsoever in Nakatsu and Akiyama would have led one of ordinary skill in the art to modify the "servo" 60 in FIG. 2 of Nakatsu to retain the single jump method of Nakatsu and generate the track jump start control signal based on the results of a tracking operation performed before the single jump when Akiyama allegedly discloses generating such a track jump start control signal only for the

second jump in a two-jump method. Rather, it is submitted that the only reasonable combination of Nakatsu and Akiyama in light of Akiyama's disclosure would have been to modify Nakatsu's "servo" 60 to use Akiyama's two-jump method. However, such a combination would not provide "a driver to move the pickup directly to a target track of the optical disc in response to the track jump start control signal" as recited in claim 1 because it would move the "pickup" 3 in FIG. 2 of Nakatsu indirectly to a target track via an intermediate track as in Akiyama's two-jump method.

For at least the foregoing reasons, it is submitted that Nakatsu and Akiyama do not disclose or suggest "a driver to move the pickup directly to a target track of the optical disc in response to the track jump start control signal, and stop moving the pickup in response to the track jump end control signal" as recited in claim 1.

Claim 4

It is submitted that Nakatsu and Akiyama do not disclose or suggest the following features of independent claim 4 for at least the same reasons discussed above that Nakatsu and Akiyama do not disclose or suggest the similar features of claim 1.

judging a position of the pickup based on the error signal;
generating a track jump start control signal based on the
judged position of the pickup; [and]
outputting the track jump start control signal to a driver to
move the pickup directly to a target track of the optical disc.

Claim 6

It is submitted that Nakatsu and Akiyama do not disclose or suggest the following features of independent claim 6:

an RF processing unit to generate a positional error signal
based on an output signal of the optical pickup;
a servo to judge a position of the optical pickup relative to
a track of the optical disc based on the positional error signal, and
output a tracking control signal for controlling a position of the
optical pickup based on the judged position;

a driver to control the position of the optical pickup using the tracking control signal output from the servo; and

a controller to monitor the tracking control signal, and control the track jumping based on the tracking control signal.

The Examiner considers the velocity detection circuit 15 in FIG. 2 of Nakatsu to be "an RF processing unit to generate a positional error signal based on an output signal of the optical pickup" as recited in claim 6. However, the velocity detection circuit 15 actually generates a current spot velocity signal indicating a current velocity of a light spot on the optical disk 1.

The Examiner considers the velocity control section 60 in FIG. 2 of Nakatsu to be "a servo to judge a position of the optical pickup relative to a track of the optical disc based on the positional error signal, and output a tracking control signal for controlling a position of the optical pickup based on the judged position" as recited in claim 6. However, the velocity control section 60 actually judges a velocity error of the optical head 3 based on the current spot velocity signal generated by the velocity detection circuit 15 and a reference spot velocity signal generated by the reference velocity generating circuit 19, and outputs a velocity control signal for controlling a velocity of the optical head 2 based on the judged velocity error.

The Examiner considers the linear actuator 5 in FIG. 2 of Nakatsu to be "a driver to control the position of the optical pickup using the tracking control signal output from the servo" as recited in claim 6. However, the linear actuator 5 actually controls the velocity of the optical head 3 using the velocity control signal output from the velocity control section 60.

The Examiner considers the command circuit 90 in FIG. 1 of Nakatsu to be "a controller to monitor the tracking control signal, and control the track jumping based on the tracking control signal" as recited in claim 6. However, the command circuit does not monitor the velocity control signal output from the velocity control section 60, which the Examiner considers to be "a tracking control signal" as recited in claim 6, and control the track jumping based on the velocity control signal. In fact, the command circuit 90 does not monitor anything because it only outputs the stroke count N to the track counting section 30, the direction input D to the reference velocity generating section 40, and the track access command S14 to the track counting section 30 and the reference velocity generating section 40.

Furthermore, it is submitted that Nakatsu and Akiyama do not disclose or suggest the following features of claim 6:

if the controller determines that the tracking control signal indicates that the position of the optical pickup is within a predetermined range of a center of the track, the controller immediately outputs a track jump start control signal to the driver to move the optical pickup directly to a target track of the optical disc; and

if the controller determines that the tracking control signal indicates that the position of the optical pickup is not within the predetermined range, the controller delays outputting the track jump start control signal to the driver until the tracking control signal indicates that the position of the optical pickup is within the predetermined range.

The Examiner considers these features to be taught by Akiyama. However, the tracking control signal that is output from the tracking control unit 6 in FIG. 2 of Akiyama is not input to the track jump control unit 8, which the Examiner presumably considers to be a "controller" as recited in claim 6, such that the track jump control circuit 8 cannot "determine[] that the tracking control signal indicates that the position of the optical pickup is/is not within a/the predetermined range" as recited in claim 6.

Further, as discussed above in connection with claim 1, the only reasonable combination of Nakatsu and Akiyama in light of Akiyama's disclosure would retain Akiyama's two-jump method, and thus would not provide "[a] controller [that] immediately outputs a track jump start control signal to the driver to move the optical pickup directly to a target track of the optical disc" as recited in claim 6.

Claim 9

It is submitted that Nakatsu and Akiyama do not disclose or suggest the following feature of independent claim 9:

A method of controlling track jumping of an optical pickup relative to an eccentrically rotating track of an optical disc.

The Examiner has not pointed out where Nakatsu and/or Akiyama disclose or suggest "an eccentrically rotating track of an optical disc" as recited in claim 9, and no form of the word "eccentric" appears in either Nakatsu or Akiyama.

Furthermore, it is submitted that Nakatsu and Akiyama do not disclose or suggest the following features of claim 9 for at least the same reasons discussed above that Nakatsu and Akiyama do not disclose or suggest the similar features of claim 6.

judging whether a position of the optical pickup is within a predetermined range relative to a center of the track at a time of a track jump command;

immediately outputting the track jump command to the optical pickup to move the optical pickup directly to a target track of the optical disc if the optical pickup is within the predetermined range; and

delaying the outputting of the track jump command to the optical pickup if the optical pickup is not within the predetermined range.

Conclusion—Rejection 1

For at least the foregoing reasons, it is respectfully requested that the rejection of claims 1-6, 9, 13, and 15 (i.e., claims 1, 4, 6, and 9 discussed above and claims 2, 3, 5, 13, and 15 depending directly or indirectly from claims 1, 4, and 9) under 35 USC 103(a) as being unpatentable over Nakatsu in view of Akiyama be withdrawn.

Rejection 2

Claims 7 and 8 have been rejected under 35 USC 103(a) as being unpatentable over Nakatsu in view of Akiyama and Ceshkovsky et al. (Ceshkovsky) (U.S. Reissued Patent No. RE32,574). This rejection is respectfully traversed.

It is submitted that Nakatsu, Akiyama, and Ceshkovsky do not disclose or suggest the following feature of dependent claim 7:

wherein after the controller has output the track jump start signal to the driver, the controller calculates the target track and sets an output time of a track jump end signal.

The Examiner states as follows:

CESHKOVSKY teaches that the controller calculates a target track to be jumped to (**column 6:55-60 discloses that the**

controller calculates the drive signal as a function of the distance to be traveled).

It is noted that the phrase "a target track to be jumped to" does not appear in claim 7 as it was considered in the Final Office Action of March 17, 2009, but appears in claim 7 as it was considered in the Office Action of September 16, 2008. Since the Examiner has considered the wrong version of claim 7, it is submitted that the Examiner has not established a *prima facie* case of obviousness with respect to claim 7.

Furthermore, column 6, lines 55-60, of Ceshkovsky relied on by the Examiner states as follows:

In accordance with the present invention, the carriage controller 52 prescribes a preferred sequence for applying the drive signals to the carriage motor 28, as a function of the distance between [*sic*] the track currently being read by the player and the track targeted for retrieval in the function generator 50, for retrieval of the information stored in the target track.

However, it is not seen where this portion or any other portion of Ceshkovsky discloses or suggests the feature "the controller calculates the target track" recited in claim 7. Furthermore, the Examiner has not explained why the fact that "the controller calculates the drive signal as a function of the distance to be traveled" as explained by the Examiner allegedly provides this feature of claim 7. These arguments were also presented on pages 19 and 20 of the Amendment of December 15, 2008, but the Examiner did not take note of these arguments and answer the substance of them in the Final Office Action of March 17, 2009, as required by MPEP 707.07(f).

For at least the foregoing reasons, it is respectfully requested that the rejection of claims 7 and 8 (i.e., claim 7 discussed above and claim 8 depending therefrom) under 35 USC 103(a) as being unpatentable over Nakatsu in view of Akiyama and Ceshkovsky be withdrawn.

Rejection 3

Claims 10-12, 14, and 16 have been rejected under 35 USC 103(a) as being unpatentable over Nakatsu in view of Akiyama and "the Admitted Prior Art (Applicant's Admission of Fact of the Official Notice in the previously mailed official action)."

However, it is submitted that the applicant did not make an "Admission of Fact of the Official Notice in the previously mailed official action" in the Amendment of December 15, 2008, as alleged by the Examiner as will be discussed in greater detail below.

Furthermore, it is submitted that Nakatsu and Akiyama do not disclose or suggest the following features of dependent claims 10-12:

wherein the track jump start control signal is a kick voltage, and
the track jump end control signal is a brake voltage,

or the following feature recited in dependent claim 14:

wherein the track jump command is a kick voltage that is output to
a driver of the optical pickup,

or the following feature recited in dependent claim 16.

wherein the track jump stop command is a brake voltage that is
output to a driver of the optical pickup.

The Examiner states as follows:

The combined disclosures of Nakatsu and Akiyama teach the limitations of claims 4, 6 and 9, respectively. They fail, however, to expressly teach that the jump-start control signal is a "kick voltage" or that the jump-end control signal is a "brake voltage". However, The [sic] Examiner takes the [sic] Official Notice that it is well known in the art and would be obvious to apply a kick voltage and a brake voltage for the purpose of forcibly moving the optical pickup in an axial direction (see pertinent references provided below by the Examiner).

However, the Examiner did not provide any such "pertinent references" in the Final Office Action of March 17, 2009. However, the Examiner did provide such "pertinent references" on page 11 of the Office Action of September 16, 2008, where the Examiner states as follows:

SHIOURA (US 2005/0237889) teaches use of kick voltage and brake voltage.

LEE (US 2005/0201224) teaches use of kick voltage and brake voltage.

ASAKURA (US 20020051411) [sic] teaches use of kick voltage and brake voltage.

However, since the Examiner has cited Shioura, Lee, and Asakura to show the features she is taking Official Notice of, it is not understood why the Examiner is taking Official Notice of these features, since the whole point of taking Official Notice is to avoid the need to cite a reference. Furthermore, despite the Examiner's statement that she is taking Official Notice, the Examiner is actually relying on Shioura, Lee, and Asakura to support the rejection. Accordingly, it is submitted that the Examiner was required to include Shioura, Lee, and Asakura in the statement of the rejection pursuant to MPEP 706.02(j), which states as follows on MPEP page 700-48:

Where a reference is relied on to support a rejection, whether or not in a minor capacity, that reference should be positively included in the statement of the rejection. See *In re Hoch*, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970).

Accordingly, should the Examiner repeat the rejection, it is respectfully requested that the Examiner include Shioura, Lee, and Asakura in the statement of the rejection in the next Office Action.

Furthermore, while the Examiner may take Official Notice of facts not in the record or to rely on "common knowledge" in making a rejection, the Examiner cannot take Official Notice that it would have been obvious to modify a reference, as the Examiner has done here in his statement that "The [sic] Examiner takes the [sic] Official Notice that it . . . would be obvious to apply a kick voltage and a brake voltage for the purpose of forcibly moving the optical pickup in an axial direction," because obviousness is a legal conclusion, not a fact. Rather, it is submitted that the Examiner is required to clearly articulate "the reason(s) why the claimed invention would have been obvious" in order to establish a *prima facie* case of obviousness under 35 USC 103(a). See MPEP 2143 on MPEP page 2100-128.

Here, it is submitted that the Examiner was required to explain how the combination of Nakatsu and Akiyama would be modified to use the kick voltage and brake voltage allegedly disclosed by Shioura, Lee, and Asakura, and to explain why one of ordinary skill in the art would have wanted to "forcibly mov[e] the optical pickup in an axial direction" as proposed by the Examiner. Since the Examiner has not done this, it is submitted that the Examiner has not established a *prima facie* case of obviousness with respect to claims 10-12, 14, and 16.

The above arguments were also presented on pages 16-20 of the Amendment of December 15, 2008. In response to these arguments, the Examiner states as follows on pages 15 and 16 of the Final Office Action of March 17, 2009:

The Examiner rejects the notion that by citing Shioura, Lee and Asakura as proof of common knowledge in the art of the use of kick/brake voltage, the Examiner is relying on Shioura, Lee and Asakura.

In the instance that the Examiner did not cite Shioura, Lee and Asakura as an accompaniment to the Official Notice statement, the Attorney could, as a challenge to the Examiner's assertion of common knowledge in the art, request that the Examiner provide evidence of the feature's teaching in the prior art. The Examiner has merely provided said evidence in anticipation of the Attorney's request.

Furthermore, the Examiner has not included the phrase "obvious to modify" in the Official Notice, above. The Examiner's statement "that it is well known in the art and would be obvious to apply a kick voltage and a brake voltage for the purpose of forcibly moving the optical pickup in an axial direction", is intended to serve as an assertion of common knowledge in the art of the output of a kick voltage and a brake voltage for adjusting the position of the optical pickup.

The Applicant's decision to argue the preemptive citing of evidentiary prior art, rather than to make the argument that the positional adjustment to the pickup via kick voltage and brake voltage, is not common knowledge in the art (thereby effectively challenging the Official Notice statement on the merits), is interpreted by the Examiner as an Admission of Fact.

However, it is submitted that the Examiner did not actually take Official Notice that the use of kick voltage and brake voltage is common knowledge in the art in the Office Action of September 16, 2008, because the Examiner cited Shioura, Lee, and Asakura in the Office Action of September 16, 2008, to show the use of kick voltage and brake voltage. Since the Examiner did not actually take Official Notice, the applicant cannot reasonably be considered to have admitted to a taking of Official Notice.

Furthermore, although the Examiner's statement of Official Notice does not include the phrase "obvious to modify," it is submitted that the Examiner has in effect proposed to modify the combination of Nakatsu and Akiyama proposed by the Examiner to use the kick voltage and brake voltage allegedly disclosed by Shioura, Lee, and Asakura. The Examiner states "[t]he

combined disclosures of Nakatsu and Akiyama . . . fail, however, to expressly teach that the jump-start control signal is a 'kick voltage' or that the jump-end control signal is a 'brake voltage'." However, the Examiner considers Shioura, Lee, and Asakura to provide evidence that it was common knowledge in the art to apply a kick voltage and a brake voltage for the purpose of forcibly moving an optical pickup in an axial direction. This is the fact that the Examiner alleges she has taken Official Notice of.

However, as admitted by the Examiner, Nakatsu and Akiyama do not disclose or suggest applying a kick voltage and a brake voltage for the purpose of forcibly moving an optical pickup in an axial direction. Thus, in order to establish a *prima facie* case of obviousness with respect to claims 10-12, 14, and 16, the Examiner is required to clearly articulate the reasons why the claimed invention would have been obvious. See MPEP 2143 on MPEP page 2100-128. That is, the Examiner is required to clearly articulate the reasons why it would have been obvious to modify the combination of Nakatsu and Akiyama proposed by the Examiner to apply a kick voltage and a brake voltage for the purpose of forcibly moving an optical pickup in an axial direction. However, the Examiner has not clearly articulated such reasons, such that the Examiner has not established a *prima facie* case of obviousness with respect to claims 10-12, 14, and 16.

The Examiner appears to be under the mistaken impression that she can take Official Notice of the legal conclusion of obviousness. However, as explained above and on page 17 of the Amendment of December 15, 2008, the Examiner cannot take Official Notice of the legal conclusion of obviousness, but can take Official Notice only of facts. Thus, the applicant did in fact challenge the Examiner's taking of Official Notice in the Office Action of September 16, 2008, that "it is well known in the art and would be obvious to apply a kick voltage and a brake voltage for the purpose of forcibly moving the optical pickup in an axial direction" in the Amendment of December 15, 2008. Accordingly, it is submitted that the applicant did not make an "Admission of Fact of the Official Notice in the previously mailed official action" in the Amendment of December 15, 2008, as alleged by the Examiner.

For at least the foregoing reasons, it is respectfully requested that the rejection of claims 10-12, 14, and 16 under 35 USC 103(a) as being unpatentable over Nakatsu in view of Akiyama and "the Admitted Prior Art (Applicant's Admission of Fact of the Official Notice in the previously mailed official action)" be withdrawn.

Conclusion

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with the filing of this paper, please charge the same to our Deposit Account No. 503333.

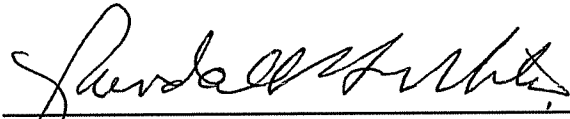
Respectfully submitted,

STEIN MCEWEN, LLP

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05/08/09

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